

§§ 765.306–765.350 [Reserved]

Subpart H—Partial Release of Real Estate Security

§ 765.351 Requirements to obtain Agency consent.

The borrower must obtain prior consent from the Agency for any transactions affecting the real estate security, including, but not limited to, sale or exchange of security, a right-of-way across security, and a partial release. The Agency may consent to such transactions provided the conditions in this section are met.

(a) *General.* The following conditions apply to all transactions affecting real estate:

(1) The transaction will enhance the objectives for which the FLP loan or loans were made;

(2) The transaction will not jeopardize the borrower's ability to repay the FLP loan, or is necessary to place the borrower's farming operation on a sound basis;

(3) The amount received for the security being disposed of or the rights being granted is not less than the market value;

(4) Any proceeds in excess of the market value are remitted to lienholders in the order of lien priority;

(5) The transaction must not interfere with the borrower's farming operation;

(6) The market value of the remaining security is adequate to secure the FLP loans, or if the market value of the security before the transaction was inadequate to fully secure the FLP loans, the Agency's equity in the security is not diminished;

(7) The environmental requirements of subpart G of 7 CFR part 1940 must be met;

(8) The borrower cannot graduate to other credit on any program except for CL;

(9) The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718; and

(10) The disposition of real estate security for an outstanding ST loan will only be authorized if the transaction will result in full repayment of the loan.

(b) *Sale of timber, gravel, oil, gas, coal, or other minerals.* (1) Agency security instruments require that the borrower request and receive written consent from the Agency prior to certain transactions, including, but not limited to, cutting, removal, or lease of timber, gravel, oil, gas, coal, or other minerals, except small amounts used by the borrower for ordinary household purposes.

(i) The sale of timber from real estate that secures an FLP loan will be considered a disposition of a portion of the security.

(ii) For loans secured by real estate before December 23, 1985, the Agency has a security interest in mineral products, gravel, oil, gas, coal, or other resources and the sale by unit or lump sum payment will be considered a disposition of security.

(iii) For loans secured by real estate on or after December 23, 1985, the Agency has a security interest in mineral products, gravel, oil, gas, coal, or other resources if the value of such products was included in an appraisal. When the Agency has a security interest, the sale of such products will be considered a disposition of a portion of the security.

(2) Any compensation the borrower may receive for damages to the surface of the real estate security resulting from exploration for, or recovery of, minerals must be assigned to the Agency. Such proceeds will be used to repair the damage, and any remaining funds must be remitted to lienholders in the order of lien priority or, with all lienholders' consent, used for an authorized loan purpose.

(c) *Exchange of security property.* (1) When an exchange of security results in a balance owing to the borrower, the proceeds must be used in accordance with § 765.352.

(2) Property acquired by the borrower must meet program objectives, purposes and limitations relating to the type of loan involved as well as applicable requirements for appraisal, title clearance and security.

(d) *Sale under contract for deed.* A borrower may sell a portion of the security for not less than its market value under a contract for deed subject to the following:

(1) Not less than 10 percent of the purchase price will be paid as a down

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payment and remitted to lienholders in the order of lien priority;

(2) Payments will not exceed 10 annual installments of principal plus interest or the remaining term of the FLP loan, whichever is less. The interest rate will be the current rate being charged on a regular FO loan plus 1 percent or the rate on the borrower's notes, whichever is greater. Payments may be in equal or unequal installments with a balloon final installment;

(3) The Agency's security rights, including the right to foreclose on either the portion being sold or retained, will not be impaired;

(4) Any subsequent payments must be assigned to the lienholders and remitted in order of lien priority, or with lienholder's approval, used in accordance with § 765.352;

(5) The mortgage on the property sold will not be released prior to either full payment of the borrower's account or receipt of the full amount of sale proceeds;

(6) The sale proceeds applied to the borrower's loan accounts will not relieve the borrower from obligations under the terms of the note or other agreements approved by the Agency;

(7) All other requirements of this section are met.

(e) *Transfer of allotments.* (1) The Agency will not approve any crop allotment lease that will adversely affect its security interest.

(2) The sale of an allotment must comply with all conditions of this subpart.

(3) The borrower may transfer crop allotments to another farm owned or controlled by the borrower. Such transfer will be treated as a lease under § 765.252.

[72 FR 63309, Nov. 8, 2007, as amended at 75 FR 54016, Sept. 3, 2010]

§ 765.352 Use of proceeds.

(a) Proceeds from transactions affecting the real estate security may only be used as follows:

(1) Applied on liens in order of priority;

(2) To pay customary costs appropriate to the transaction, which meet the following conditions:

- (i) Are reasonable in amount;
- (ii) Cannot be paid by the borrower;

(iii) Will not be paid by the purchaser;

(iv) Must be paid to consummate the transaction; and

(v) May include postage and insurance when it is necessary for the Agency to present the promissory note to the recorder to obtain a release of a portion of the real estate from the mortgage.

(3) For development or enlargement of real estate owned by the borrower as follows:

(i) Development or enlargement must be necessary to improve the borrower's debt repayment ability, place the borrower's farming operation on a sound basis, or otherwise enhance the objectives of the loan;

(ii) Such use will not conflict with the loan purposes, restrictions or requirements of the type of loan involved;

(iii) Funds will be deposited in a supervised bank account in accordance with subpart B of part 761 of this chapter;

(iv) The Agency has, or will obtain, a lien on the real estate developed or enlarged;

(v) Construction and development will be completed in accordance with § 761.10 of this chapter.

(b) After acceleration, the Agency may approve transactions only when all the proceeds will be applied to the liens against the security in the order of their priority, after deducting customary costs appropriate to the transaction. Such approval will not cancel or delay liquidation, unless all loan defaults are otherwise cured.

§ 765.353 Determining market value.

(a) *Security proposed for disposition.* (1) The Agency will obtain an appraisal of the security proposed for disposition.

(2) The Agency may waive the appraisal requirement when the estimated value is less than \$25,000.

(b) *Security remaining after disposition.* The Agency will obtain an appraisal of the remaining security if it determines that the transaction will reduce the value of the remaining security.

(c) *Appraisal requirements.* Appraisals, when required, will be conducted in accordance with § 761.7 of this chapter.